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February 10, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 31, 2008

Case Number: TSO-0663

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual's security clearance should be restored. ²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was issued a security clearance in connection with that employment. During a routine reinvestigation of the individual, the local DOE security office learned that he and his wife had participated in counseling during the summer of 2006 due to the fact that the individual had accumulated a significant amount of credit card debt due to his gambling. Because this information raised security concerns and cast into doubt the individual's continued eligibility for access authorization, the local security office (LSO) summoned him for an interview with a personnel security specialist in January 2008. Because this Personnel Security Interview (PSI) did not resolve these doubts, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist") for an agency-sponsored evaluation. The DOE psychologist prepared a report based on this evaluation and sent it to the LSO.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

After reviewing this report, the transcript of the PSI, and the rest of the individual's security file, the LSO determined that derogatory information existed that cast into doubt the individual's continued eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced six exhibits into the record of this proceeding and presented the testimony of the DOE psychologist. The individual submitted four exhibits into the record, and presented the testimony of three witnesses, in addition to testifying himself. The individual and two of his witnesses attended the hearing and testified in person. The individual's third witness, a local psychologist, was unavailable on the day of the hearing. His testimony, including cross-examination by the DOE Counsel, was recorded at an earlier date. A DVD of that testimony was played at the hearing, and a supplemental transcript of the testimony was made.³ In the body of this Decision, citations to the hearing transcript will employ the abbreviation "Tr.," and citations to the supplemental transcript will be abbreviated as "Sup. Tr."

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (h) defines as derogatory information indicating that the individual has an "illness or mental condition, which in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect" in the individual's judgement or reliability. Under Criterion (l), the DOE alleges that the individual "has engaged in unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." The Letter cites the same factual circumstances as support for both of these criteria. These circumstances are that the individual (i) has been diagnosed by the DOE psychologist as suffering from Pathological Gambling, an illness or mental condition which could cause a significant defect in his reliability, (ii) has suffered gambling losses of \$70,000 within the last three years, (iii) has incurred credit card debt in excess of \$80,000, with much, if not most, of it due to gambling, (iv) attended Gamblers Anonymous (GA) for short periods in 2005 and 2006, but stopped going when he convinced himself that he could stop gambling on his own, and (v) admitted that he would lie to his wife about his gambling, and that gambling was detrimental to his marriage and to his finances.

³ The DVD was introduced into the record of this proceeding as "Individual's Exhibit 2."

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would be clearly consistent with the national interest and would not endanger the common defense and security. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. The DOE’s Security Concerns

At the hearing, the individual generally did not contest the allegations set forth in the Notification Letter. This derogatory information adequately justifies the DOE’s invocation of paragraphs (h) and (l), and raises significant security concerns. A duly qualified mental health professional has diagnosed the individual as suffering from a condition that could impair his judgement, reliability, or trustworthiness. This condition, Pathological Gambling, is also a concern because it could lead the individual to commit financial crimes, such as espionage. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines F and I.*

B. Mitigating Evidence

Through his own testimony and that of his wife, a co-worker, and the individual’s psychologist, the individual attempted to show that he is now rehabilitated from his Pathological Gambling disorder, and that he is not experiencing financial pressures that would make him susceptible to espionage or other illegal activities. The individual’s wife testified that she is a “shareholder,” or partner, in a local

law firm, and that their combined household income is approximately \$280,000 per year. Tr. at 9, 11. She first discovered that the individual had a gambling problem in 2005, and he made a couple of unsuccessful attempts to stop. These attempts basically consisted of attendance at “a couple of GA meetings.” Tr. at 12. During one of these attempts, the individual stopped gambling for “a couple of months or so,” but, unbeknownst to his wife, he started up again. Six or eight months later, the individual’s wife discovered the deception when she examined his credit report and found out that he had secretly obtained a credit card and accumulated \$26,000 to \$27,000 of gambling debt on it. Tr. at 26-27. After she confronted the individual about this in September 2007, he entered into an intensive outpatient treatment program at a local clinic. Since his participation in this program, she has noticed a marked change in his demeanor. “He’s definitely been more open,” she stated. “Our communication stuff - - we’ve been a lot better since he’s been in the program.” Tr. at 13. She indicated that, since his participation in the gambling treatment program, she has seen no signs of the individual’s previous duplicity. Tr. at 14.

She continued that the individual has incurred approximately \$90,000 in gambling debts since 2005, that approximately \$30,000 of that amount has already been repaid, and that both she and the individual are committed to having the individual pay off the remainder. Tr. at 16-17. The gambling debts did not force them to miss a mortgage or utility payment, or payment on any other major bill, and the funds that the individual spent on gambling were, essentially, discretionary income. Tr. at 18.

She then added that she continues to gamble “occasionally.” Tr. at 21. This annoys the individual, not because it makes him want to gamble, but because his therapy has made him “anti-gambling” in general. Tr. at 21-22. She testified that she could give up gambling if it was a “risk factor” for her husband, but that he had told her that he has not had an urge to gamble for approximately one year. Tr. at 22. She concluded that she does not know of any gambling by the individual since his completion of the outpatient program. Tr. at 43.

The individual’s psychologist, who founded the intensive outpatient treatment program that the individual participated in, also testified. First, he provided some general information about pathological gamblers. He said that, as is the case with alcoholics, pathological gamblers appear to be genetically predisposed to the condition, and that there are measurable differences between the brain activity of pathological gamblers while they are gambling and the brain activity of others engaged in the same behavior. Sup. Tr. at 7-8, 10. He also summarized the diagnostic criteria for Pathological Gambling by stating that people with this affliction “gamble when it makes no sense to do so, they chase their losses. If they lose money that they don’t want to lose, rather than stopping their gambling behavior, they increase it.” Sup. Tr. at 9. He added that the individual “very clearly meets all of the diagnostic criteria for Pathological Gambling.” Sup. Tr. at 11.

The individual’s psychologist then discussed the intensive outpatient treatment program and the individual’s participation in that program. The program run by the individual’s psychologist is six weeks in duration, and consists of group therapy sessions four days a week for several hours each day. The program also requires attendance at at least three GA meetings, making it effectively a seven-day a week program for six weeks. After six weeks, there is a one-year aftercare program that

is “optional . . . , but still a commitment,” during which participants are expected to attend GA and additional outpatient meetings. Sup. Tr. at 13.

The individual’s psychologist testified that the individual successfully completed the prescribed course of treatment, and was, in fact,

One of our most involved and engaged patients in recent memory. He showed up for every meeting, came to meetings he wasn’t required to be at, has been more active in [GA] than our suggested guidelines, has been instrumental in helping other gamblers. As a matter of fact, he brought somebody who was in desperate emotional straits, he literally took them by the hand and led them into the clinic a couple of weeks ago. He has been an exemplary patient.

Sup. Tr. at 14. As a result of these efforts and of the individual’s having abstained from gambling for over a year, his psychologist stated that his Pathological Gambling is now in remission and his prognosis is “excellent.” Sup. Tr. at 16-17. He concluded that as long as the individual continues his present course of treatment, his chances of relapsing are “quite low,” and his Pathological Gambling will not cause a significant defect in judgement or reliability. Sup. Tr. at 21, 25. The individual’s co-worker testified that he has known the individual for approximately 10 years, that he sometimes socializes with the individual, and that he has never had reason to believe that the individual represents a threat to national security. Tr. at 54-58.

The individual testified that he first realized that he had a gambling problem in 2005. He stated that he and his wife gambled together earlier in their relationship, but then decided that it had become “a little excessive in terms of our time and the money” they were spending, so they decided to quit “cold turkey.” He abstained from gambling for “several months, but that, in early 2005, he resumed. Later that year, he obtained a credit card without informing his wife, and charged approximately \$10,000 worth of gambling debt using that account. Tr. at 63. After he informed his wife of the existence of this debt, he again attempted to quit, this time attending one GA meeting. Again, he was able to remain abstinent for “three to four months or so” before he went back to gambling, this time hiding it from his wife. Tr. at 64-65. In 2006, he decided to inform his wife that he had resumed gambling, and participated in four one-on-one counseling sessions and two GA meetings in another ultimately unsuccessful attempt to quit gambling. Tr. at 65.

Then, in October 2007, the individual began participating in the intensive outpatient treatment program. Tr. at 67. The group therapy sessions, approximately two and one-half hours in length each, were led by three principal counselors, including the individual’s psychologist. During these sessions, the participants would discuss emotional and spiritual issues related to recovery, and the individual’s psychologist would primarily lecture on the biology and the science of addiction. Tr. at 69.

After the six-week program ended, the individual increased the number of GA meetings he attended to “five or six” meetings per week. This was partly to compensate for the group therapy sessions that he was no longer attending, and partly because of his previous failed attempts to quit gambling. Tr. at 75. The individual currently attends two to three GA meetings a week, in addition to an “aftercare”

meeting at the intensive outpatient treatment program. He testified that he has accepted that gambling is something that he cannot control on his own, and that it is going to take continuing treatment for the rest of his life. Tr. at 92. Consequently, he intends to continue this treatment. Tr. at 78. He added that his last wager occurred on September 14, 2007, and that he does not intend to ever gamble again. Tr. at 79.

C. Analysis

After considering this testimony and the record in this matter as a whole, I find that the individual has adequately addressed the DOE's security concerns under Criteria (h) and (l). I reach this conclusion for several reasons.

First, I attribute greater weight to the testimony of the individual's psychologist than I do to that of the DOE psychologist. Although the DOE psychologist admitted that the individual is "doing an excellent job" in his rehabilitative efforts, he declined to modify the finding in his report that the individual is not demonstrating adequate evidence of reformation or rehabilitation from Pathological Gambling. Tr. at 125, 128-131. He testified that his evaluation of the individual was based on his initial meeting, which lasted approximately 90 minutes, the approximately three hours of testimony that he heard at the hearing, the psychiatric testing that he conducted, and his review of the individual's security file. Tr. at 134-135. In contrast, the individual's psychologist's opinion concerning the individual's rehabilitation was based on regular contact and observation over the course of over a year, including intensive outpatient treatment meetings of at least two and one-half hours' duration each, four days per week for a period of approximately six weeks, and continuing weekly follow-up meetings. Sup. Tr. at 10, 13, 28. Accordingly, the individual's psychologist has had a much more extensive opportunity to observe and evaluate the individual's rehabilitation.

Moreover, while the DOE psychologist testified that Pathological Gambling is "not the main focus" of his practice, and could only describe the number of such gamblers that he had treated as being "more than a few," Tr. at 133, the individual's psychologist founded the Pathological Gambling clinic that the individual patronized, and has specialized in treating problem gamblers since "the mid 1980s." Sup. Tr. at 5-6. Indeed, even the DOE psychologist acknowledged that the individual's psychologist is "an expert in this community, one that you send [problem gamblers] to." Tr. at 125. He further admitted that he's "not pretending to know more about gambling disorders than" the individual's psychologist. Tr. at 136.

In addition, the DOE psychologist's testimony referred to several risk factors that he perceived as being applicable to the individual. One of those factors is a medical condition that the individual suffers from, Spasmodic Dysphonia.⁴ The DOE psychologist stated that this disorder is "kind of similar" to Parkinson's Disease, which has "a very well-known correlation with gambling disorders." Tr. at 129-130. However, later the DOE psychologist indicated that he didn't know whether the Spasmodic Dysphonia was related to the individual's Pathological Gambling. Tr. at 144.

⁴ Spasmodic Dysphonia is a voice disorder characterized by involuntary movements of one or more muscles of the larynx.

Another risk factor cited by the DOE psychologist is the individual's previous failed attempts to stop gambling. However, I do not find these failures to be of significant value in predicting whether the individual will be able to continue to abstain from gambling. The earlier attempts consisted solely of attendance at "one or two" GA meetings, a very limited amount of counseling, and the individual's own efforts. Tr. at 64-66. In contrast, the individual has now sought and obtained extensive professional help, satisfied the requirements of an intensive outpatient treatment program, obtained a sponsor and regularly attended GA meetings for over a year as of the date of the hearing, and abstained from gambling during this period. When asked to compare the individual's earlier efforts with his current treatment regimen, the individual's psychologist said that there "is really no comparison because effectively he was not in any treatment. Going to one meeting in a year is not . . . treatment for an addiction." Sup. Tr. at 16. The individual stated that his earlier failures were attempts to control his gambling primarily through his own efforts, whereas now he realizes that he cannot stop on his own. Tr. at 66, 92. I am also favorably impressed with the intensity with which the individual has pursued his rehabilitation. Not only has he attended more GA meetings than is suggested by his treatment program, he has "chaired" meetings, has served as a temporary sponsor, and hopes to be chosen as a long-term sponsor for other pathological gamblers. Sup. Tr. at 14, Tr. at 113. For these reasons, I do not believe that the individual's earlier failed attempts have significant predictive value with regard to the individual's long-term rehabilitative prospects. I therefore conclude that the individual's psychologist's opinion that the individual is exhibiting adequate evidence of rehabilitation is entitled to greater weight than is the opinion of the DOE psychologist.

Second, I conclude that the individual's rehabilitative efforts are not motivated primarily by a desire to keep his access authorization. Consequently, I am not concerned that, after this proceeding has ended, he will cease those efforts and return to his previous pattern of behavior. In this regard, I note that he entered into the intensive outpatient treatment program prior to the initiation of this administrative review proceeding. Moreover, he testified that losing his clearance "would not affect [his] job substantially. It would definitely close some doors to me that I'd rather keep open, . . . , but its not my primary motivation, by any means." Tr. at 104. Accordingly, I found credible the individual's testimony that his primary purpose in seeking to stop gambling was "the healing of my marriage and my family," *Id.*, and I believe that this continuing motivation will make a future relapse unlikely.

Finally, the record in this matter is devoid of any information indicating that the individual's gambling losses have caused financial pressures that could lead him to commit crimes such as espionage. The individual's total gambling debt over the last *three* years (approximately \$90,000) is less than one-third of his *annual* household income (approximately \$280,000). His wife testified that he gambled with what was essentially discretionary income, and both stated that no financial obligations have gone unmet because of the individual's gambling. Tr. at 18, 79. This testimony is supported by the individual's credit report. *See* Individual's Exhibit 4.

V. CONCLUSION

For the reasons set forth above, I find that the individual has successfully addressed the DOE's security concerns under Criteria (h) and (l). I therefore conclude that he has demonstrated that

restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's security clearance should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: February 10, 2009